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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,806

12/02/2003

Mary Darlene Temple

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EXAMINER

ACKUN, JACOB K

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

09/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/725,806	Applicant(s) TEMPLE, MARY DARLENE	
	Examiner Jacob K. Ackun Jr.	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-10 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Broselow alone, or especially in view of Fischer.
3. . The rejection is set out in detail in the last office action and is incorporated herein in its entirety by reference.
4. Applicant's arguments filed 7/25/08 have been fully considered but they are not persuasive. Applicant argues that the outstanding rejection is improper because the findings of the examiner are mere unsupported conclusions. Applicant argues that the examiner must articulate rationale as well as findings of fact to support the obviousness rejection, and that the examiner has not done so. Applicant also argues that the examiner should draft another office action to the satisfaction of applicants in the above regard, and that when the examiner does so, the examiner should make such action non final. Presumably, this would give rise to another argument by applicant, and so on.

The examiner disagrees that there is anything wrong with the office action. The position of the examiner with regard to the claims and the applied prior art is believed to be very clear from a careful reading of the office action. Applicant may

disagree with the rejection. That is one thing. In fact that is the usual response.

However, what applicant is also doing is attempting to make it look as though there is absolutely no basis for the rejection whatsoever. Such an approach is not believed to be warranted based on the issues in this case. Nor is it believed to be helpful.

In drafting these office actions the examiner is mindful of the fact that applicant is represented by counsel that is well versed in the relevant law and rules, particularly with regard to the manner in which claims are to be interpreted by the examiner during patent prosecution, per the relevant authority. Moreover applicant's counsel is no doubt aware of the time constraints every examiner is under. Additionally, it is noted that no portion of the MPEP, nor any other authority, has ever required a patent examiner to expressly articulate in the office action where the examiner finds in the prior art every word of every claim. The requirement is for every limitation in the claims to be taken into account, and that is what has been done in this case, to the best of the examiners ability, given the relevant time constraints. However, counsel should be aware that no office action is required to specifically detail where every word in every claim is found in the prior art. That would be impossible, and as noted, is not required.

Applicant has drafted and presented for examination, claims that are, to anyone versed in claim interpretation, much broader in scope than the specific embodiments of the invention taught in the specification or discussed in applicant's response. In fact claim 1 is so broad that it reads on prior art that does not even appear to teach applicant's invention as described in the specification of the subject application. So of course claim 1 has been rejected over this prior art. Now, instead of amending the claims to appropriately narrow their scope, or present reasons why the combination recited in each of applicants claims as drafted should be patented, the applicant argues that the rejection is so defective that it can not be understood.

Claim 1 is the broadest claim to which the applicant believes she is entitled. As is believed to be crystal clear Broselow discloses all of the elements of claim 1, except possibly for those encompassed on the last 3 lines of the claim. However, the last office action clearly articulates the examiners reasoning as to how these elements are accounted for. There is also a very clear statement of the obviousness rejection. See page 3 lines 1-12 of the last office action. Thus the applicant's assertion that the rejection can not be understood is itself not clear.

(Coincidentally, an "arrangement", any arrangement, for organizing as recited in the noted portion of claim 1 is believed to be so notorious that claim 1 is treated in the alternative as being anticipated as well as obvious, as recognized by applicant's

counsel. However, in view of applicant's argument to the effect that the limitations in the noted portion of the claim are not expressly taught in the reference, the examiner notes that it may not be necessary to argue that Broselow anticipates claim 1 in order to make a valid rejection of the claim because of the obviousness rejection). Perhaps applicant disagrees that it is conventional to organize or sort different containers in arrangements corresponding to the differences between the containers or their contents, as clearly articulated by the examiner in the rejection. In this regard, perhaps applicant disagrees that applicant is not the first to place all, for example, red bottles on one shelf or all green bottles on another. Perhaps applicant disagrees that in any store, containers of one product are usually arranged together on a shelf separately from containers of another product. However, this does not make the examiners position not clear.

To further support the noted findings, the examiner discussed Fischer in detail. The examiner specifically indicated in the last office action that Fischer clearly teaches storing color coded syringe tips in containers that are color coded to match the syringe tip colors. In response applicant has indicated that applicant does not see this teaching in Fischer! A review of Fischer indicates that the feature is clearly shown therein as indicated by the examiner. Thus, whether applicant wants to agree on the record or not, even Fischer shows canisters 38 for holding syringe

tips 20, the canisters being color coded to match the color code 18 of the syringe tips that are in a particular canister. This, very clearly, also constitutes an arrangement that meets all of the requirements of the last 3 lines of claim 1. Just as clearly it can not be the only arrangement in the world that meets this portion of claim 1.

Similarly applicant's traverse of the rejection of independent claim 6 is not understood. The claim reads on any syringe that has markings on the barrel thereof, a combination that is clearly within the prior art. Applicant has not argued that she is the first to invent the syringe. Applicant has not argued that she is the first to place markings on the barrel thereof. So the question is why present the claim again without any changes? How can the examiner issue a claim to a syringe with markings or dosage indicia on a barrel thereof? Are known syringes customarily not filled with medication to a pre-determined dosage (for example, based on the medication) prior to a nurse or other healthcare professional administering the "shot"? If the examiner is missing something with regard to claim 6 the examiner would welcome the applicant pointing this out, and apologizes in advance for the continued oversight.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728